

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
July 21, 2003

D042507 People v. Henderson

In that no appealable order or judgment has yet been entered, the notice of appeal is premature. The appeal is dismissed without prejudice to refile a notice of appeal after an order or judgment has been entered.

D042208 Atta v. Mauriello

Plaintiff Sascha Ashraf Atta's appeal from the December 6, 2002 order granting defendant Thomas Mauriello's petition to compel arbitration is dismissed.

D041607 Scripps Health v. Hoppe

Pursuant to California Rules of Court, rule 8, the appeal filed January 31, 2003, is dismissed for failure of appellant to timely deposit costs for preparing the record on appeal (Cal. Rules of Court, rule 4(b) and 5(c)).

D040210 People v. Harden

The judgment is affirmed. CERTIFIED FOR PUBLICATION. McDonald, J.;
We Concur: Huffman, Acting P.J., Nares, J.

D042116 Christy B. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. McDonald, J.; We Concur: Nares, Acting P.J., O'Rourke, J.

D039882 Citizens United to Save The Beach et al. v. California State Lands Commission

The judgment in favor of the California State Lands Commission (respondent) is reversed and the matter is remanded with directions that the trial court enter new orders overruling respondent's demurrer to appellants' Code of Civil Procedure section 526(a), violation of public trust and declaratory relief causes of action and granting appellants' motion for an order allowing them to amend their amended complaint to add the City of Del Mar as an indispensable party defendant. The judgment is otherwise affirmed. McDonald, J.; We Concur: Huffman, Acting P.J., Haller, J.

D040432 Mahdavi v. State of California et al.

Mahdavi's recusal motion is denied, the order denying Mahdavi's motion to vacate the judgment is affirmed, and Ralphs' request for costs on appeal is granted. Mahdavi is declared a vexatious litigant. The clerk of this court is directed to provide a copy of this opinion and order to the Judicial Council. (section 391.7, subd. (e).) Copies shall also be mailed to the presiding judge and clerk of the San Diego County Superior Court. Nares, J.; We Concur: Huffman, Acting P.J., McDonald, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
July 21, 2003 (Continued)

D038034 Jean-Paul Goyet et al., v. Beverly Dean et al.

It is ordered that the opinion filed herein on June 26, 2003, be modified as follows:

1. On pages 1 and 2, the first two paragraphs of the opinion are deleted and replaced with the following: Jean-Paul (JP) and Vctoria Goyet brought an action for defamation, invasion of privacy, intentional infliction of emotional distress, breach of contract private nuisance and other claims against other residents of their condominium complex (defendants Beverley Dean, Joseph Proulx, Margaret Jackson, Lisa and Peter Williamson, Yancey Newell Tarrant, Charles Finlay and Charles Scott), the property managers for the complex (defendants Frank Salas (individual and doing business as Mega Management Enterprises) and Denise Benham-Hill (collectively the Mega Management defendants)) and others. The Goyets appeal from judgments entered in favor of the defendants after the trial court granted special motions to strike their complaint under Code of Civil Procedure section 425.16 (commonly known as the anti-SLAPP statute) by defendants Dean, Jackson, Proulx, Tarrant and the Williamsons (the SLAPP defendants) and granted summary judgment in favor of defendants Finlay, Scott and the Mega Management defendants (the summary judgment defendants). They also appeal from orders awarding the defendants attorney fees in the action. (All further statutory references are to the Code of Civil Procedure unless otherwise specified.)

As to the SLAPP defendants, the Goyets contend (1) those defendants waived their right to bring such motions by not asserting section 425.16 as a defense in their answers and by their delay in bringing the motions; (2) those defendants did not meet their burden to show that section 425.16 applies to their complaint; (3) they established a probability of success on the merits of their claims ; and (4) the trial court erred in granting those defendants' request for attorney fees incurred on matters not related to the special motions to strike or, alternatively, in awarding fees attributable to the non-contract causes of action.

2. On page 4, second sentence of the first full paragraph, delete "(collectively with Benham-Hill and Salas, the Mega Mandagement defendants)" so the sentence reads: The Promontory was managed by Benham-Hill on behalf of Mega Management Enterprises.

3. On page 32, first full paragraph, line 3, add the word "tort" after "applies equally to all" so the line reads as follows: common interest privilege applies equally to all tort claims based on the protected

4. On page 33, line 2, the words "for breach of contract or" is to be inserted between the words "liable" and "as" so that the lines read: to establish that Jackson and Dean are liable for breach of contract or as coconspirators for the statements made by

5. On page 43, the first full sentence, after the words "More importantly," add the words "as to the motions by Scott and Finlay," so the sentence reads: More importantly, as to the motions by Scott and Finlay, the Goyets did not make a good faith showing by affidavit that a continuance was needed to obtain facts essential to justify opposition.

6. On page 47, the last sentence, beginning "Finally, the Goyets" is deleted and the following sentence is inserted in its place: Finally, because the statements are of such a nature that they could be found to have a "natural tendency to injure, " JP is not required to establish special damages to avoid summary judgment on his defamation claim.

7. On page 52, third full paragraph, after the first sentence ending "those defendants," add the following sentence: The issue of Scott's and Finlay's entitlement to recover attorney fees is reserved for determination by the trial court after the Goyets' remaining claims against those defendants are resolved.

8. On page 53, the third sentence of the Disposition is modified to add "Proulx" as a party entitled to recover costs on appeal, so the sentence reads: The Mega Management defendants, Jackson, Dean and Proulx are entitled to recover their appellate costs from the Goyets.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
July 21, 2003 (Continued)

The petition for rehearing are denied. Appellant's request to certify the opinion for publication is denied. There is no change in judgment.

D041887 RLLW, Inc. et al. v. Superior Court of San Diego County/Brown et al.

The petition is denied. The motion to dismiss is denied

D042447 Conwell Shonkwiler & Associates v. Superior Court of San Diego County/City of San Diego

The petition is denied.

D038763 Deutsch v. Vectron, Inc.

The judgment and order denying Vectron, Inc.'s motion for judgment notwithstanding the verdict are reversed. The court is directed to enter judgment for Vectron, Inc. Vectron, Inc. is awarded its costs on appeal. O'Rourke, J.; We Concur: Nares, Acting P.J., Haller, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
July 22, 2003

D041410 In re Z.M.P. et al., a Juvenile

The orders are affirmed. Benke, Acting P.J.; We Concur: McIntyre, J., Aaron, J.

D042082 Joleen L. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. McIntyre, J.; We Concur: McDonald, Acting P.J., O'Rourke, J.

D042117 Angela R. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. McDonald, J.; We Concur: Nares, Acting P.J., O'Rourke, J.

D042410 Michelle H. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Michelle H. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

D042016 Hada S. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. McIntyre, J.; We Concur: McDonald, Acting P.J., O'Rourke, J.

D040686 In re the Marriage of Burrow

The order is reversed and the matter is remanded to the trial court for further proceedings in accordance with this opinion. Darrell is to bear his own costs on appeal. Huffman, Acting P.J.; We Concur: Nares, J., McDonald, J.

D040871 People v. Newell

The judgment is affirmed. McDonald, Acting P.J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

D042522 Baumer v. Superior Court of San Diego County/California Department of Corrections

The petition is denied as repetitive.

D041466 In re D.M. et al., Juveniles

The appeal is dismissed. Aaron, J.; We Concur: Benke, Acting P.J., Nares, J.

D040307 People v. Nychay

D040308 People v. Nychay

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., McIntyre, J.

D041484 In re Elizabeth H., a Juvenile

D041692 In re Elizabeth H., a Juvenile

The orders are affirmed. O'Rourke, J.; We Concur: Benke, Acting P.J., Haller, J.

D042524 In re Alex Y., a Juvenile

The notice of appeal filed July 14, 2003 is dismissed as untimely.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
July 23, 2003

D040720 In re Jason J., a Juvenile

The judgment is affirmed. Huffman, J.; We Concur: Benke, Acting P.J., McDonald, J.

D039024 People v. Frontier Pacific

The judgment is affirmed. Huffman, Acting P.J.; We Concur: McDonald, J., Aaron, J.

D038511 Clearview Eye & Laser Medical Center et al. v. TLC Network Services, Inc., et al.

D039311 Clearview Eye & Laser Medical Center et al. v. TLC Network Services, Inc., et al.

The judgment and order are affirmed. The matter is remanded to the trial court for its determination of an award to Clearview of attorney fees on appeal. McConnell, J.; We Concur: Benke, Acting P.J., McDonald, J.

D041195 In re Kyle B., a Juvenile

The appeal is dismissed. Huffman, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

D042071 Marriott International, Inc. v. Workers' Compensation Appeals Board et al.

The petition is denied.

D042351 Ryan v. Ronquillo et al.

The petition is denied. The stay issued June 30, 2003, is vacated.

D042049 In re the estate of Justice, Deceased

The petition is denied.

D042520 Chicago Title Insurance Company v. Superior Court of San Diego County/2,002 Ranch

The petition is denied.

D042469 In re the Marriage of De La Cruz

The petition is denied.

D042057 Debbra P. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. McIntyre, J.; We Concur: McDonald, Acting P.J., O'Rourke, J.

D042495 In re Justin Edward S., a Juvenile

The appeal is dismissed.

D042125 The Vons Companies, Inc. v. Superior Court of San Diego County/Mission Gorge Square Partnership et al.

The petition is denied.

D039607 Yurosek v. Dewbre

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately. Each party to bear own costs on appeal.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
July 24, 2003

D042498 In re Jonathan S., a Juvenile

In that no appealable order or judgment was entered at the time of the filing of the notice of appeal, the notice of appeal is premature. The appeal is dismissed without prejudice to the minor filing a notice of appeal after an order or judgment has been entered.

D042192 F.H. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. McIntyre, J.; We Concur: McDonald, J., O'Rourke, J.

D040768 Kassab v. Client Security Fund Commission of the State Bar of California/Foytack

The judgment is affirmed. Client Security Fund Commission of the State Bar of California is entitled to its costs on appeal. McIntyre, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

D041658 In re Victoria G., a Juvenile

The judgment is affirmed. Benke, Acting P.J.; We Concur: McIntyre, J., Aaron, J.

D042486 The petition is denied without prejudice to refile in San Diego Superior Court, 220 West Broadway, San Diego, CA 92101; mailing address: P.O. Box 122724, San Diego, CA 92112-2724. The Clerk of the Court is directed to return the videotape submitted with this petition to Martin.

D041737 People v. Elliott

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 38).

D042113 Welby v. Department of Motor Vehicles

The appeal is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
July 25, 2003

D039250 People v. Towner

The judgment is affirmed. McIntyre, J.; We Concur: Benke, Acting P.J., Aaron, J.

D042557 Douglas B. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

D042561 San Diego County Health and Human Services Agency v. Douglas B.

Because there is a reference to a Welfare & Institutions Code section 366.26 hearing, the matter will proceed by petition for writ review (D042557).

The San Diego Juvenile Court is directed to prepare a 39.1B writ record for D042557.

The appeal filed July 21, 2003 and assigned Court of Appeal case number D042561 is dismissed.

D041277 Holman v. Superior Court of San Diego County/The City of San Diego

The petition for rehearing is denied.

D041911 Z.W. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. McIntyre, J.; We Concur: McDonald, Acting P.J., O'Rourke, J.

D041346 In re Sandra H. et al., Juveniles

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

D042143 In re Langston on Habeas Corpus

The petition is denied.

D042115 In re Rodrick on Habeas Corpus

The petition is denied.

D040969 People v. Latham

The petition for rehearing is denied.

D042217 Chapman v. Trustees of the California State University

The appeal is dismissed on the ground it is from a nonappealable, interlocutory order. The dismissal of the instant appeal is without prejudice to appeal from a final order or judgment in the case.

D042186 In re Colbert on Habeas Corpus

The petition is denied.